

PREVAILED

Roll Call No. _____

FAILED

Ayes _____

WITHDRAWN

Noes _____

RULED OUT OF ORDER

HOUSE MOTION _____

MR. SPEAKER:

I move that House Bill 1634 be amended to read as follows:

1 Page 10, between lines 29 and 30, begin a new paragraph and insert:
2 "SECTION 4. IC 23-2-5-15, AS AMENDED BY P.L.230-2007,
3 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
4 JULY 1, 2009]: Sec. 15. **(a) This section does not apply to a violation
5 or an alleged violation of section 20(f)(9) of this chapter.**

6 **(b)** Any person who violates this chapter or any rule or regulation
7 adopted under this chapter, in connection with a contract for the
8 services of a loan broker, is liable to any person damaged by the
9 violation, for the amount of the actual damages suffered, interest at the
10 legal rate, and attorney's fees. If a person violates any provision of this
11 chapter, or any rule or regulation adopted under this chapter, in
12 connection with a contract for loan brokering services, the contract is
13 void, and the prospective borrower is entitled to receive from the loan
14 broker all sums paid to the loan broker.

15 SECTION 5. IC 23-2-5-20, AS AMENDED BY P.L.145-2008,
16 SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
17 JULY 1, 2009]: Sec. 20. **(a) As used in this section, "ability to
18 repay", with respect to a home loan, including the consolidation or
19 refinancing of an existing home loan, means the following factors
20 likely to affect a borrower's ability to repay the home loan at the
21 loan's full monthly cost:**

22 **(1) The borrower's:**

23 **(A) income, not including nonrecurring overtime
24 payments, nonrecurring seasonal compensation, or other**

1 irregular income;
 2 (B) expenses;
 3 (C) assets; and
 4 (D) liabilities, including any loan obligations that have
 5 been incurred but are not yet due and payable;
 6 as of the date, or the projected date, of the closing of the home
 7 loan.

8 (2) The borrower's credit history.

9 (b) As used in this section, "borrower" includes a prospective
 10 borrower, where appropriate.

11 (c) As used in this section, "full monthly cost", with respect to
 12 a home loan, means the maximum monthly payment that the
 13 borrower will be required to pay with respect to the home loan,
 14 calculated as the total of the following monthly costs that the
 15 borrower will be responsible for paying during the term of the
 16 home loan, to the extent determinable as of the date, or the
 17 projected date, of the closing of the home loan:

18 (1) Principal plus interest at the home loan's fully indexed
 19 rate.

20 (2) Property taxes. If the home loan will be secured by a new
 21 home, the construction of which will not be complete as of the
 22 date, or the projected date, of the closing of the home loan, the
 23 property taxes considered for purposes of this subsection
 24 must be an estimate that:

25 (A) is based on the property taxes that were most recently
 26 due and payable with respect to completely constructed,
 27 comparable new homes located in the area in which the
 28 new home is or will be located; and

29 (B) is not based on the assessed value of unimproved real
 30 estate.

31 (3) Homeowners insurance premiums.

32 (4) Private mortgage insurance premiums.

33 (5) Premiums for:

34 (A) credit life insurance;

35 (B) credit disability insurance;

36 (C) credit unemployment insurance; or

37 (D) other consumer credit insurance;

38 that the borrower has agreed to pay.

39 (6) Homeowners and other assessments, such as special
 40 assessments, condominium fees, and homeowners association
 41 fees.

42 (d) As used in this section, "fully indexed rate", with respect to
 43 a home loan, means:

44 (1) for a fixed rate home loan in which the interest rate will
 45 not vary during the term of the loan, the rate as of the date, or
 46 the projected date, of closing;

47 (2) for a home loan in which the interest varies according to

1 an index, the sum of the index rate as of the date, or the
 2 projected date, of closing plus the maximum margin
 3 permitted at any time under the loan agreement; or
 4 (3) for all other home loans in which the rate may vary at any
 5 time during the term of the loan, the maximum rate that may
 6 be charged during the term of the loan.

7 (e) As used in this section, "home loan" has the meaning set
 8 forth in IC 24-9-2-9.

9 ~~(a)~~ (f) A person shall not, in connection with a contract for the
 10 services of a loan broker, either directly or indirectly, do any of the
 11 following:

- 12 (1) Employ any device, scheme, or artifice to defraud.
- 13 (2) Make any untrue statements of a material fact or omit to state
- 14 a material fact necessary in order to make the statements made, in
- 15 the light of circumstances under which they are made, not
- 16 misleading.
- 17 (3) Engage in any act, practice, or course of business that operates
- 18 or would operate as a fraud or deceit upon any person.
- 19 (4) Collect or solicit any consideration, except a bona fide third
- 20 party fee, in connection with a loan until the loan has been closed.
- 21 (5) Receive any funds if the person knows that the funds were
- 22 generated as a result of a fraudulent act.
- 23 (6) File or cause to be filed with a county recorder any document
- 24 that the person knows:

25 (A) contains:

- 26 (i) a misstatement; or
- 27 (ii) an untrue statement;

28 of a material fact; or

29 (B) omits a statement of a material fact that is necessary to
 30 make the statements that are made, in the light of
 31 circumstances under which they are made, not misleading.

32 (7) Knowingly release or disclose the unencrypted, unredacted
 33 personal information of one (1) or more borrowers or prospective
 34 borrowers, unless the personal information is used in an activity
 35 authorized by the borrower or prospective borrower under one (1)
 36 or more of the following circumstances:

37 (A) The personal information is:

- 38 (i) included on an application form or another form; or
- 39 (ii) transmitted as part of an application process or an
- 40 enrollment process.

41 (B) The personal information is used to obtain a consumer
 42 report (as defined in IC 24-5-24-2) for an applicant for credit.

43 (C) The personal information is used to establish, amend, or
 44 terminate an account, a contract, or a policy, or to confirm the
 45 accuracy of the personal information.

46 However, personal information allowed to be disclosed under this

subdivision may not be printed in whole or in part on a postcard or other mailer that does not require an envelope, or in a manner that makes the personal information visible on an envelope or a mailer without the envelope or mailer being opened.

(8) Engage in any reckless or negligent activity allowing the release or disclosure of the unencrypted, unredacted personal information of one (1) or more borrowers or prospective borrowers. An activity described in this subdivision includes an action prohibited by section 18(d) of this chapter.

(9) Recommend a home loan to, or procure a home loan on behalf of, a borrower without grounds to believe that, as of the date or the projected date of the closing of the home loan, the borrower has the ability to repay the loan as written.

~~(b)~~ (g) A person who commits an act described in subsection ~~(a)~~ (f) is subject to sections 10, 14, 15, and 16 of this chapter."

Page 45, between lines 19 and 20, begin a new paragraph and insert:

"SECTION 10. IC 24-4.4-2-201.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 201.5. (1) As used in this section, "ability to repay", with respect to a first lien mortgage transaction, including the consolidation or refinancing of an existing first lien mortgage transaction, means the following factors likely to affect a debtor's ability to repay the first lien mortgage transaction at the first lien mortgage transaction's full monthly cost:**

(a) The debtor's:

(i) income, not including nonrecurring overtime payments, nonrecurring seasonal compensation, or other irregular income;

(ii) expenses;

(iii) assets; and

(iv) liabilities, including any loan obligations that have been incurred but are not yet due and payable;

as of the date, or the projected date, of the closing of the first lien mortgage transaction.

(b) The debtor's credit history.

(2) As used in this section, "debtor" includes a prospective debtor, where appropriate.

(3) As used in this section, "full monthly cost", with respect to a first lien mortgage transaction, means the maximum monthly payment that the debtor will be required to pay with respect to the first lien mortgage transaction, calculated as the total of the following monthly costs that the debtor will be responsible for paying during the term of the first lien mortgage transaction, to the extent determinable as of the date, or the projected date, of the closing of the first lien mortgage transaction:

(a) Principal plus interest at the first lien mortgage transaction's fully indexed rate.

(b) Property taxes. If the first lien mortgage transaction will be secured by a new dwelling, the construction of which will not be complete as of the date, or the projected date, of the closing of the first lien mortgage transaction, the property taxes considered for purposes of this subsection must be an estimate that:

(A) is based on the property taxes that were most recently due and payable with respect to completely constructed, comparable new homes located in the area in which the new dwelling is or will be located; and

(B) is not based on the assessed value of unimproved real estate.

(c) Homeowners insurance premiums.

(d) Private mortgage insurance premiums.

(e) Premiums for:

(i) credit life insurance;

(ii) credit disability insurance;

(iii) credit unemployment insurance; or

(iv) other consumer credit insurance;

that the debtor has agreed to pay.

(f) Homeowners and other assessments, such as special assessments, condominium fees, and homeowners association fees.

(4) As used in this section, "fully indexed rate", with respect to a first lien mortgage transaction, means:

(a) for a fixed rate first lien mortgage transaction in which the interest rate will not vary during the term of the first lien mortgage transaction, the rate as of the date, or the projected date, of closing;

(b) for a first lien mortgage transaction in which the interest varies according to an index, the sum of the index rate as of the date, or the projected date, of closing plus the maximum margin permitted at any time under the loan agreement; or

(c) for all other first lien mortgage transactions in which the rate may vary at any time during the term of the first lien mortgage transaction, the maximum rate that may be charged during the term of the first lien mortgage transaction.

(5) A creditor may not recommend or issue a first lien mortgage transaction to a debtor without grounds to believe that, as of the date or the projected date of the closing of the first lien mortgage transaction, the debtor has the ability to repay the first lien mortgage transaction as written."

Page 62, between lines 21 and 22, begin a new paragraph and insert:
 "SECTION 27. IC 24-4.4-3-113, AS ADDED BY P.L.145-2008, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 113. The grant of powers to the department under this article does not affect remedies available to debtors under this

article or under other principles of law or equity. **However, a creditor is not liable to:**

- (a) a debtor;**
- (b) a subsequent purchaser of property that is the subject of a first lien mortgage transaction; or**
- (c) any other person;**

for a violation or an alleged violation of IC 24-4.4-2-201.5(5)."

Page 99, between lines 17 and 18, begin a new paragraph and insert:

"SECTION 64. IC 24-9-3-1.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 1.1. (a) As used in this section, "ability to repay", with respect to a home loan, including the consolidation or refinancing of an existing home loan, means the following factors likely to affect a borrower's ability to repay the home loan at the home loan's full monthly cost:**

(1) The borrower's:

(A) income, not including nonrecurring overtime payments, nonrecurring seasonal compensation, or other irregular income;

(B) expenses;

(C) assets; and

(D) liabilities, including any loan obligations that have been incurred but are not yet due and payable;

as of the date, or the projected date, of the closing of the home loan.

(2) The borrower's credit history.

(b) As used in this section, "borrower" includes a prospective borrower, where appropriate.

(c) As used in this section, "full monthly cost", with respect to a home loan means the maximum monthly payment that the borrower will be required to pay with respect to the home loan, calculated as the total of the following monthly costs that the borrower will be responsible for paying during the term of the home loan, to the extent determinable as of the date, or the projected date, of the closing of the home loan:

(1) Principal plus interest at the home loan's trigger rate.

(2) Property taxes. If the home loan will be secured by a new home, the construction of which will not be complete as of the date, or the projected date, of the closing of the home loan, the property taxes considered for purposes of this subsection shall be an estimate that:

(A) is based on the property taxes that were most recently due and payable with respect to completely constructed, comparable new homes located in the area in which the new home is or will be located; and

(B) is not based on the assessed value of unimproved real estate.

1 **(3) Homeowners insurance premiums.**

2 **(4) Private mortgage insurance premiums.**

3 **(5) Premiums for:**

4 **(A) credit life insurance;**

5 **(B) credit disability insurance;**

6 **(C) credit unemployment insurance; or**

7 **(D) other consumer credit insurance;**

8 **that the borrower has agreed to pay.**

9 **(6) Homeowners and other assessments, such as special**
10 **assessments, condominium fees, and homeowners association**
11 **fees.**

12 **(d) A creditor may not recommend or issue to, or procure on**
13 **behalf of, a borrower a home loan without grounds to believe that,**
14 **as of the date or the projected date of the closing of the home loan,**
15 **the borrower has the ability to repay the home loan as written.**

16 SECTION 65. IC 24-9-4-8 IS AMENDED TO READ AS
17 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8. (a) A creditor may
18 not make a high cost home loan without regard to repayment ability, **as**
19 **required under IC 24-9-3-1.1.**

20 (b) If a creditor presents evidence that the creditor:

21 **(1) followed commercially reasonable practices in determining**
22 **the borrower's debt to income ratio; and**

23 **(2) had grounds to believe that, as of the date or the projected**
24 **date of the closing of the home loan, the borrower had the**
25 **ability to repay the home loan as written, as required under**
26 **IC 24-9-3-1.1;**

27 there is a rebuttable presumption that the creditor made the high cost
28 home loan with due regard to repayment ability. ~~For purposes of this~~
29 ~~section, there is a rebuttable presumption that the borrower's statement~~
30 ~~of income provided to the creditor is true and complete.~~

31 (c) **For purposes of subsection (b)(1),** commercially reasonable
32 practices include the use of:

33 (1) the debt to income ratio:

34 (A) listed in 38 CFR 36.4337(c)(1); and

35 (B) defined in 38 CFR 36.4337(d); and

36 (2) the residual income guidelines established under:

37 (A) 38 CFR 36.4337(e); and

38 (B) United States Department of Veterans Affairs form
39 26-6393.

40 SECTION 66. IC 24-9-5-1, AS AMENDED BY P.L.141-2005,
41 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
42 JULY 1, 2009]: Sec. 1. (a) A person who purchases or is otherwise
43 assigned a high cost home loan is subject to all affirmative claims and
44 any defenses, except for an affirmative claim or defense pursuant to
45 IC 24-9-3-7, with respect to the high cost home loan that the borrower
46 could assert against a creditor or broker of the high cost home loan.

1 However, this section does not apply if the purchaser or assignee
 2 demonstrates by a preponderance of the evidence that a reasonable
 3 person exercising ordinary due diligence could not determine that the
 4 loan was a high cost home loan. A purchaser or an assignee is
 5 presumed to have exercised reasonable due diligence if the purchaser
 6 or assignee:

7 (1) has in place at the time of the purchase or assignment of the
 8 subject loans, policies that expressly prohibit the purchase or
 9 acceptance of the assignment of any high cost home loans;

10 (2) requires by contract that a seller or an assignor of home loans
 11 to the purchaser or assignee represents and warrants to the
 12 purchaser or assignee that either:

13 (A) the seller or assignor will not sell or reassign any high cost
 14 home loans to the purchaser or assignee; or

15 (B) the seller or assignor is a beneficiary of a representation
 16 and warranty from a previous seller or assignor to that effect;

17 (3) exercises reasonable due diligence:

18 (A) at the time of purchase or assignment of home loans; or

19 (B) within a reasonable period after the purchase or
 20 assignment of home loans;

21 intended by the purchaser or assignee to prevent the purchaser or
 22 assignee from purchasing or taking assignment of any high cost
 23 home loans; or

24 (4) satisfies the requirements of subdivisions (1) and (2) and
 25 establishes that a reasonable person exercising ordinary due
 26 diligence could not determine that the loan was a high cost home
 27 loan based on the:

28 (A) documentation required by the federal Truth in Lending
 29 Act (15 U.S.C. 1601 et seq.); and

30 (B) itemization of the amount financed and other disbursement
 31 disclosures.

32 (b) A borrower acting only in an individual capacity may assert
 33 against the creditor or any subsequent holder or assignee of a high cost
 34 home loan:

35 (1) a violation of IC 24-9-4-2 as a defense, claim, or counterclaim,
 36 after:

37 (A) an action to enjoin foreclosure or to preserve or obtain
 38 possession of the dwelling that secures the loan is initiated;

39 (B) an action to collect on the loan or foreclose on the
 40 collateral securing the loan is initiated; or

41 (C) the loan is more than sixty (60) days in default;

42 within three (3) years after the closing of a home loan;

43 (2) a violation of this article, **other than a violation or an**
 44 **alleged violation of IC 24-9-3-1.1(d)**, in connection to the high
 45 cost home loan as a defense, claim, or counterclaim in an original
 46 action within five (5) years after the closing of a high cost home

1 loan; and

2 (3) any defense, claim, counterclaim, or action to enjoin
3 foreclosure or preserve or obtain possession of the home that
4 secures the loan, including a violation of this article after:

5 (A) an action to collect on the loan or foreclose on the
6 collateral securing the loan is initiated;

7 (B) the debt arising from the loan is accelerated; or

8 (C) the loan is more than sixty (60) days in default;

9 at any time during the term of a high cost home loan.

10 (c) In an action, a claim, or a counterclaim brought under subsection
11 (b), the borrower may recover only amounts required to reduce or
12 extinguish the borrower's liability under a home loan plus amounts
13 required to recover costs, including reasonable attorney's fees.

14 (d) The provisions of this section are effective notwithstanding any
15 other provision of law. This section shall not be construed to limit the
16 substantive rights, remedies, or procedural rights available to a
17 borrower against any creditor, assignee, or holder under any other law.
18 The rights conferred on borrowers by subsections (a) and (b) are
19 independent of each other and do not limit each other.

20 SECTION 67. IC 24-9-5-4, AS AMENDED BY P.L.3-2005,
21 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
22 JULY 1, 2009]: Sec. 4. **(a) This section does not apply to a violation
23 or an alleged violation of IC 24-9-3-1.1(d).**

24 ~~(a)~~ **(b)** A person who violates this article is liable to a person who
25 is a party to the home loan transaction that gave rise to the violation for
26 the following:

27 (1) Actual damages, including consequential damages. A person
28 is not required to demonstrate reliance in order to receive actual
29 damages.

30 (2) Statutory damages equal to two (2) times the finance charges
31 agreed to in the home loan agreement.

32 (3) Costs and reasonable attorney's fees.

33 ~~(b)~~ **(c)** A person may be granted injunctive, declaratory, and other
34 equitable relief as the court determines appropriate in an action to
35 enforce compliance with this chapter.

36 ~~(c)~~ **(d)** The right of rescission granted under 15 U.S.C. 1601 et seq.
37 for a violation of the federal Truth in Lending Act (15 U.S.C. 1601 et
38 seq.) is available to a person acting only in an individual capacity by
39 way of recoupment as a defense against a party foreclosing on a home
40 loan at any time during the term of the loan. Any recoupment claim
41 asserted under this provision is limited to the amount required to
42 reduce or extinguish the person's liability under the home loan plus
43 amounts required to recover costs, including reasonable attorney's fees.
44 This article shall not be construed to limit the recoupment rights
45 available to a person under any other law.

46 ~~(d)~~ **(e)** The remedies provided in this section are cumulative but are

not intended to be the exclusive remedies available to a person. Except as provided in subsection ~~(e)~~, **(f)**, a person is not required to exhaust any administrative remedies under this article or under any other applicable law.

~~(e)~~ **(f)** Before bringing an action regarding an alleged deceptive act under this chapter, a person must:

- (1) notify the homeowner protection unit established by IC 4-6-12-2 of the alleged violation giving rise to the action; and
- (2) allow the homeowner protection unit at least ninety (90) days to institute appropriate administrative and civil action to redress a violation.

~~(f)~~ **(g)** An action under this chapter must be brought within five (5) years after the date that the person knew, or by the exercise of reasonable diligence should have known, of the violation of this article.

~~(g)~~ **(h)** An award of damages under subsection ~~(a)~~ **(b)** has priority over a civil penalty imposed under this article."

Page 99, between lines 33 and 34, begin a new paragraph and insert:

"SECTION 69. IC 28-1-2-36.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 36.5. (a) This section applies only to contributions made after June 30, 2009.**

(b) The definitions in IC 3-5-2 apply to this section to the extent they do not conflict with the definitions in this article.

(c) As used in this section, "candidate" refers to any of the following:

- (1) A candidate for a state office.**
- (2) A candidate for a legislative office.**
- (3) A candidate for a local office.**

(d) As used in this section, "committee" refers to any of the following:

- (1) A candidate's committee.**
- (2) A regular party committee.**
- (3) A committee organized by a legislative caucus of the house of the general assembly.**
- (4) A committee organized by a legislative caucus of the senate of the general assembly.**

(e) As used in this section, "officer" refers only to either of the following:

- (1) An individual listed as an officer of a corporation in the corporation's most recent annual report.**
- (2) An individual who is a successor to an individual described in subdivision (1).**

(f) As used in this section, "regulated person" means:

- (1) Any:**
 - (A) financial institution;**
 - (B) person required to file notification with the department**

under IC 24-4.5-6-202;

(C) person subject to IC 24-7; or

(D) other person subject to regulation by the department under this title.

(2) Any person licensed or required to be licensed under IC 24-4.5.

(g) For purposes of this section, a person is considered to have an interest in a regulated person if the person satisfies any of the following:

(1) The person holds at least a one percent (1%) interest in the regulated person.

(2) The person is an officer of the regulated person.

(3) The person is an officer of a person that holds at least a one percent (1%) interest in the regulated person.

(4) The person is a political action committee of the regulated person.

(h) A regulated person is considered to have made a contribution if a contribution is made by a person who has an interest in the regulated person.

(i) A person may not make a contribution to a candidate or a committee:

(1) at any time during which the person is a regulated person or has an interest in a regulated person; and

(2) for a period of three (3) years following the date on which the person ceases to be a regulated person or ceases to have an interest in a regulated person.

(j) A person who knowingly or intentionally violates this section commits a Class D felony."

Page 100, between lines 33 and 34, begin a new paragraph and insert:

"SECTION 71. IC 34-30-2-89.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 89.5. IC 23-2-5-15 (Concerning a person that recommends a home loan to, or procures a home loan on behalf of, a borrower in connection with a contract for the services of a loan broker).**

SECTION 72. IC 34-30-2-96.4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 96.4. IC 24-4.4-3-113 (Concerning a creditor that recommends or issues a first lien mortgage transaction to a debtor).**

SECTION 73. IC 34-30-2-96.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 96.6. IC 24-9-5-1(b)(2) (Concerning a creditor that recommends or issues to, or procures on behalf of, a borrower a home loan).**

SECTION 74. IC 34-30-2-96.7 IS ADDED TO THE INDIANA

1 CODE AS A NEW SECTION TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2009]: **Sec. 96.7. IC 24-9-5-4(a) (Concerning**
3 **a creditor that recommends or issues to, or procures on behalf of,**
4 **a borrower a home loan).".**

5 Renumber all SECTIONS consecutively.
(Reference is to HB 1634 as printed February 18, 2009.)

Representative Bardon